



2005 President Benjamin Harrison Day at the State House
Teacher Background Material
Ex Parte Milligan

Relevant Indiana State Social Studies Standards*

Standard 1 *History*

- The Civil War (Indiana and the nation)
- Indiana History

Standard 2 *Civics and Government*

- Structure of the Indiana judicial branch
- The Indiana Constitution
- The United States Constitution
- The Bill of Rights (especially 1st Amendment and 5th Amendment)
- The U.S. Supreme Court

Standard 5 *Individuals, Society, and Culture*

- Changing societal ideas about the rights of individuals versus the rights of the general public and public safety—especially regarding freedom of speech during wartime

*suggestions for application to state math and language arts standards can be found at the end of this document

Ex Parte Milligan: Case Summary

Lambdin Milligan lived near Fort Wayne, Indiana, and he opposed both President Lincoln and the Civil War. He was very outspoken in his opposition, and after a speech urging people to resist being drafted into the army, he was arrested and brought to Indianapolis for trial. Milligan was arrested by the military and charged with treason. His trial was held before a military tribunal. He was found guilty and sentenced to death. Milligan successfully appealed his case to the U. S. Supreme Court. Following the decision of the U.S. Supreme Court, Milligan returned to Indiana for a third and final trial.

This material was prepared by Dr. Elizabeth R. Osborn, Special Assistant to the Chief Justice for Court History and Public Education. If you have any questions about this material, or any of the programs in the "Courts in the Classroom" project, please feel free to contact her at (317) 233-8682 or by e-mail at eosborn@courts.state.in.us or through the "Courts in the Classroom" www.in.gov/judiciary/citc.

Timeline of *Ex Parte Milligan* (and related events)

1860: Lincoln elected President

1861: Civil War begins

Late 1864: Milligan tried by military tribunal in Indianapolis. Found guilty of treason and sentenced to death.

1865: Civil War ends

1866: case is heard by the U.S. Supreme Court

1871: Milligan files a civil case back in Indiana. He sued people associated with his original military trial.

Vocabulary (listed as it appears in the script)

MILITARY TRIBUNAL: A court where military officers serve as judge and jury. Sometimes they are held in secret.

DRAFT: To make or force someone to go into the military.

UNION SOLDIER: Soldiers who fought for the northern states (President Lincoln) during the Civil War.

TREASON: Betraying or trying to cause harm to the United States of America. This crime is punishable by death.

UNITED STATES SUPREME COURT: The highest court in the United States. It is located in Washington D. C.

APPEAL: to have a higher court review the ruling of a lower court. You only do this if you are unhappy with the decision from the first court.

Key Figures in the Play

LAMBDIN MILLGAN: person accused of treason against the U.S. government during the Civil War because of his opposition to the draft. It is his three court appearances that are the focus of the script. He is from Huntington, Indiana (a small town outside Fort Wayne).

BENJAMIN HARRISON: Lawyer chosen to defend Hovey, Morton, and Spooner in the last trial—a civil trial held in Indianapolis in 1871. Harrison worked for the Indiana Supreme Court before the Civil War, and later became the only Hoosier (so far) to be

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elected U.S. President. Following his time in the White House, he returned to his private law practice in Indianapolis.

OLIVER P. MORTON: Much beloved Governor of Indiana during the Civil War. Milligan sues him and everyone else involved with his original arrest and trial.

ALVIN HOVEY: Served as a Judge on the Indiana Supreme Court. Was one of the officers on the military tribunal that found Milligan guilty of treason. Later was Governor of Indiana. Along with Oliver Morton and Benjamin Spooner he is sued by Milligan.

THOMAS HENDRICKS: Famous Indiana lawyer, Governor, and Vice-President of the United States. He was Milligan's lawyer in the final trial.

GENERAL BEN SPOONER: Union army general who was on the military tribunal with Hovey, and one of the people sued by Milligan in the civil case back in Indianapolis.

Student Roles

Scene Cards

Date: 1864

Date: 1866

Date: 1871

Text: Washington DC

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Text: Indianapolis, Indiana (used twice)

Picture: U.S. Supreme Court

Picture: First Indianapolis State Capitol Building.

Character Parts

6 Union Soldiers for the military tribunal. One of the soldiers should be assigned the role of Alvin Hovey

6 jury members (only 3 talk)

3 Justices of the U.S. Supreme Court

Telegram delivery person

Person to ring the bell before telegram is read

Bailiff

Biography Cards

Thomas Hendricks

Alvin Hovey

Oliver P. Morton

President Abraham Lincoln

Definition Cards

Appeal

Draft

Military tribunal

Treason

Union soldier

US Supreme Ct

Adult Roles

Lambin Milligan (central role; provides most of the pertinent information; suggest an adult facilitator)

Thomas Hendricks (medium role; requires a longish speech that student could easily read)*

Benjamin Harrison (medium role; requires a longish speech that student could easily read)*

General Benjamin Spooner (very small)*

Alvin P. Hovey (very small)*

Oliver P. Morton (very small)*

*When this is performed in the courtroom we usually try to ask teachers and chaperones to volunteer for these roles. Could easily be assigned to a student.

FOR STUDENTS WITH NO OTHER ROLE IN THE PLAY: Passing out a 3x5 card, direct these students to write down one question for the discussion portion of the play. They might want to ask the moderator questions about the military trying civilians, freedom of speech and so forth.

Follow-up Questions

1. What is the significance of the jury awarding Milligan only \$5. What message do you think the jury was trying to send?
2. Do you think there should be any limits on a person's ability to say what he wants in public (1st Amendment freedom of speech)? If so, under what conditions?
3. Each of Milligan's 3 courtroom appearances represent a different type of legal action: a criminal trial (the first military tribunal), an appeal (the case before the U.S. Supreme Court), and a civil case (the final trial back in Indianapolis). Discuss how each of these legal actions is different.

The Criminal Trial: In criminal cases the defendant has been charged with a specific crime. The opposition (the prosecutor) is always the government (either local, county, state, or national). Each side presents evidence, calls witnesses, and tries to convince the judge and/or jury that they are correct. If found guilty the defendant is often sentenced to jail.

An Appeal: The losing party in either a criminal or civil case may appeal the decision of the lower court. The losing party asks a higher court (in Milligan's case the U.S. Supreme Court) to review their case. There are usually several levels of appellate courts and very specific rules to follow when filing an appeal. In appellate cases there are no witnesses called, no evidence presented, or juries. A panel of judges usually hears the appeal.

The Civil Trial: A civil case is usually a lawsuit between individuals. The person bringing the suit alleges that the other has done something wrong and should make some sort of restitution (pay damages, for example). As in criminal cases, both sides present evidence, call witnesses, and try to convince the judge and/or jury that they are correct.

Related Indiana State Standards

Activities related to the case of *Ex parte Milligan* can easily be expanded to encompass standards from multiple subject areas other than social studies. A few examples are provided below.

Math:

Standard 7 Problem Solving

- How far is it from Indianapolis, Indiana (site of tribunal and civil trial) to Washington DC (location of US Supreme Court).
- How long would it have taken Milligan to get to Washington DC if he was traveling on a train going approximately 35 miles per hour?
- How long would it have taken Milligan to get to Washington DC if he was traveling by horseback covering about 50 miles per day?
- How long would it take Milligan to get to Washington Dc if he was traveling today on a commercial airplane going approximately 400 miles per hour?
- Milligan was awarded \$5 by the jury in his final courtroom appearance. The value of money changes over time. For example, \$5 would have bought you a lot more at McDonalds 20 years ago than it would today. How much was \$5 in 1871 worth in 1971? How about in 2005?

English/Language Arts:

Standard 4 and 5 Writing: Process and Application

- Have students respond to the military tribunal's verdict sentencing Milligan to death. Do they think a military tribunal is an appropriate venue for trying a civilian during wartime? Have them explain their answer.
- Ask students to provide their own verdict in the case.
- Discuss why the jury might have chosen to award Milligan only \$5.

Standard 6 Listening and Speaking: Skills, Strategies, and Application

- Have students act out scenes from Ex parte Milligan.
- Have students write their own scenes. For example, Milligan explaining to his wife and family why he is so strongly opposed to the draft.
- Have students, as if they were Milligan, write to President Lincoln asking him to stay the execution.